

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE ING GROEP, N.V.) **MASTER FILE NO.**
ERISA LITIGATION) **1:09-CV-00400-JEC**
)
)
THIS DOCUMENT RELATES TO:)
All Actions)
)

MOTION TO DISMISS

Come now Defendants ING North America Insurance Corporation, ING Life Insurance and Annuity Company, ING U.S. Pension Committee, David A. Wheat, Darryl Harris, William Delahanty, Kimberly Shattuck, Bryon Scott Burton, Catherine H. Smith and Tom McInerney (“Defendants”), who are all of the Defendants who have been served or accepted service at this time, and move under Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and other applicable law, to dismiss Plaintiffs’ Amended Consolidated Complaint, showing the Court as follows:

1. As more fully set forth in Defendants’ Memorandum of Law filed in support hereof, Plaintiffs’ Amended Consolidated Complaint should be dismissed pursuant to Fed.R.Civ.P. 12(b)(1) for lack of standing and

Fed.R.Civ.P. 12(b)(6) for failure to state a claim against Defendants upon which relief can be granted.

2. In support hereof, Defendants tender and rely upon the following exhibits attached hereto:

Exhibit	Description
A	Americas Plan (2008): ING Americas Savings Plan and ESOP
B	Americas Plan (2001): ING Americas Savings Plan and ESOP
C	Amendments to the ING Americas Savings Plan and ESOP (2001-2006)
D	Americas Plan SPD (2007): ING Americas Savings Plan and ESOP Summary Plan Description
E	Americas Plan SPD (2006): ING Americas Savings Plan and ESOP Summary Plan Description
F	ILIAC Plan (2008): ING 401(k) Plan for ILIAC Agents
G	ILIAC Plan (2000): Agents of Aetna Life Insurance and Annuity Company Incentive Savings Plan ¹
H	Amendments to ING 401(K) Plan for ILIAC Agents (2000-2006)
I	ILIAC SPD: ING 401(K) Plan for ILIAC Agents ILIAC Summary Plan Description

¹ Effective January 1, 2002, the Agents of Aetna Life Insurance and Annuity Company Incentive Savings Plan became the ING 401(k) Plan for ALIAC Agents. Effective May 1, 2002, the ING 401(k) Plan for ALIAC Agents became ING 401(k) Plan for ILIAC Agents. For ease of reference, in Defendants' Memorandum of Law in Support of the Motion to Dismiss dated August 7, 2009, each of these versions is referred to as the "ILIAC Plan."

J	Ben S. Bernanke, Chairman, Federal Reserve, <u>Address at the Federal Reserve Bank of Chicago's 43rd Annual Conference on Bank Structure and Competition</u> (May 17, 2007)
K	Emily Kaiser, <u>Paulson Sees U.S. Housing Downturn Near End</u> , Reuters, July 2, 2007
L	Excerpts from ING, Annual Report (Form 20-F) (Mar. 19, 2008)
M	John Helyar et al., <u>Ten Days Changed Wall Street as Bernanke Saw "Massive Failures,"</u> Bloomberg, Sept. 22, 2008
N	Stock Chart of ING Groep, N.V. and New York Stock Exchange Financial Index. List of NYSE Financial Index members attached as Exhibit 1.
O	U.S. Treasury Dept. TARP Transactions Report for the period ending July 1, 2009
P	Press Release, De Nederlandsche Bank, <u>Measures By The Dutch Authorities To Protect The Financial Sector</u> (Oct. 9, 2008)
Q	Press Release, De Nederlandsche Bank, <u>Government Reinforces ING's Core Capital by EUR 10 Billion</u> (Oct. 19, 2008)
R	ING, Report of Foreign Private Issuer (Form 6-K) (Apr. 9, 2009)
S	Complaint, <u>Friedus v. ING Groep, N.V.</u> , No. 09-CV-1049 (S.D.N.Y. Feb. 5, 2009)
T	Excerpts from ING, Annual Report (Form 11-K) (ING Americas Savings Plan & ESOP) (June 27, 2008)
U	Excerpts from ING, Annual Report (Form 11-K) (ING 401(k) Plan for ILIAC Agents) (June 27, 2008)

WHEREFORE, Defendants pray that Plaintiffs' Amended Consolidated Complaint be dismissed for failure to state a claim pursuant to Fed.R.Civ.P. 12(b)(1) and Fed.R.Civ.P. 12(b)(6).

Respectfully submitted, this 7th day of August, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing MOTION TO DISMISS upon all interested parties on this 7th day of August, 2009 by electronic delivery addressed to the following lawyers for Plaintiffs:

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